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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 14-13200-shl

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In the Matter of:

AEREO, INC.,

Debtor.

- - - - -x

United States Bankruptcy Court
One Bowling Green
New York, New York

June 8, 2015
2:11 PM

B E F O R E:
HON. SEAN H. LANE
U.S. BANKRUPTCY JUDGE

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Doc #233 (Confirmation Hearing) Amended Chapter 11 Plan of
Aero, Inc.

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1 P R O C E E D I N G S

2 THE COURT: Good afternoon. Please be seated.

3 We're here this afternoon for the confirmation hearing
4 in Aereo, Inc. So let me get appearances from counsel.

5 MR. CHAPMAN: Good afternoon, Your Honor. Ben Chapman
6 from Brown Rudnick, on behalf of Aereo. I'm here with my
7 colleague, William Baldiga.

8 THE COURT: All right. Good afternoon. Let me get
9 any other appearances from anyone else who might expect to
10 speak.

11 MR. KUGLER: Robert Kugler from Stinson Leonard Street
12 with my partner, Edwin Caldie, on behalf of the official
13 committee of unsecured creditors.

14 MS. GOLDEN: Susan Golden for the U.S. Trustee.

15 MR. BLUMENTHAL: Michael Blumenthal from Thompson &
16 Knight, representing NBCUniversal Media, LLC.

17 MS. CUSTODIO: Yvanna Custodio from Weil, Gotshal &
18 Manges, on behalf of CBS Broadcasting Inc. and CBS Studios.
19 Good afternoon, Your Honor.

20 THE COURT: All right. Good afternoon to you all.
21 Take it away.

22 MR. CHAPMAN: Thank you, Your Honor. We are here
23 today seeking confirmation of the amended Chapter 11 plan of
24 Aereo, Inc.

25 I'd like to start today by thanking the committee and its

1 professionals who were absolutely instrumental in not just
2 helping us with the process of negotiating and formulating the
3 plan for a consensual Chapter 11 plan today, but also were so
4 instrumental in all of the major important junctures in this
5 case, including even the sales and the auction process that
6 happened earlier. Their tremendous support and professionalism
7 has helped get us where we are today.

8 We'd also like to thank the Court for all of its
9 assistance and direction in this case, particularly during the
10 difficult and contentious issues that we faced at the beginning
11 of the case. The Court's guidance and flexibility on these
12 issues very much helped us and is greatly appreciated.

13 And as a housekeeping matter, I note that we submitted
14 the declarations of Lawton Bloom, in support of confirmation of
15 the Chapter 11 plan. Lawton Bloom is the debtor's CRO, chief
16 restructuring officer.

17 We also submitted the declaration of James Daloia, of
18 Prime Clerk, who was the debtor's solicitation agent.

19 And there being -- both of them are here in the court
20 today for any questions, but there were no objections to that,
21 so I'd like to move them into the record.

22 THE COURT: Anybody have any objection to receiving
23 those declarations?

24 MR. KUGLER: No objections, Your Honor.

25 THE COURT: All right. I don't see anyone rising. I

1 didn't see any objection on the docket. And I don't see any
2 reason why those shouldn't be admitted, so they are so
3 admitted.

4 (Declaration of Lawton Bloom was hereby received into evidence,
5 as of this date.)

6 (Declaration of James Daloia was hereby received into evidence,
7 as of this date.)

8 MR. CHAPMAN: Thank you, Your Honor.

9 The debtor originally filed its Chapter 11 plan and
10 disclosure statement on February 27th, immediately following
11 the auction. The debtor, in conversation with the committee,
12 agreed to adjourn the original schedule for consideration of
13 the disclosure statement and the plan, in an effort to work
14 with the committee and the broadcasters to reach a consensual
15 resolution to this case that would preserve as much value as
16 possible for distribution to the debtor's creditors.

17 After several weeks of long and sometimes contentious
18 negotiations, the debtor, the committee and the broadcasters
19 were able to reach an agreement resolving the broadcasters'
20 claims in this case and permitting the debtor to, among other
21 things, propose a fully consensual amended Chapter 11 plan and
22 amended disclosure statement which were filed on April 24th.

23 The Court approved the broadcasters' settlement
24 agreement on May 7th. I'm happy to report today that all
25 obligations under the settlement agreement have been -- that

1 condition to its effectiveness have been performed.

2 We are still waiting on certification from one -- from
3 certain of the broadcasters' pre-petition copyright litigation
4 counsel about certain of the discovery material that they had
5 was destroyed. But I've been in contact with counsel, and they
6 have confirmed that that process is underway and it should be
7 happening any moment now. Again, that's not a condition to its
8 effectiveness, just an update on that. The settlement
9 agreement -- the broadcasters' settlement agreement has gone
10 through.

11 The Court approved the debtor's amended disclosure
12 statement on May 8th, and as required by the Court's order
13 approving the disclosure statement, the debtor, through its
14 solicitation agent, Prime Clerk, distributed the solicitation
15 materials, including a copy of the amended Chapter 11 plan, to
16 creditors that were entitled to vote. It was all of the
17 creditors in Class 4, unsecured claims.

18 As reflected in Mr. Daloia's declaration, all the
19 cred -- a hundred percent of the creditors, in amount and in
20 number, voted in favor of the plan. The plan is a plan of
21 liquidation that contemplates the creation of a liquidation
22 trust and distributions of the debtor's assets by liquidation
23 trustee.

24 We've been in discussions as to the identity of the
25 liquidation trustee -- we have identified the debtor's CRO, Mr.

1 Bloom, as the liquidation trustee. I'll come back in a moment
2 to a potential issue around that, but I'll note that for now.

3 A copy of the liquidation trust agreement was filed
4 with a plan supplement package on June 1st. Also with the plan
5 supplement package, we included the confirmation order, which
6 was also reviewed and commented on by the committee and the
7 broadcasters.

8 The amended plan and the confirmation order are
9 consistent with the terms of the broadcasters' settlement
10 agreement. The amended plan was negotiated in good faith by
11 all parties involved, and has been overwhelmingly accepted by
12 the debtor's creditors. The debtor believes that the plan
13 complies with all of the requirements of the Bankruptcy Code
14 relating to confirmation, as required by Section 1129 of the
15 Bankruptcy Code.

16 The plan results in the -- the plan provides for the
17 classification of claims and treatment thereof, as described in
18 the plan, and as provided in the liquidation analysis filed
19 with the disclosure statement, those claims and interests will
20 receive as much or more under the plan as they would in a
21 Chapter 7 case.

22 The debtor believes that the plan is feasible and will
23 result in the prompt distribution of the debtor's assets and
24 wind-down of the debtor's estate by the liquidation trustee.

25 All of the conditions to confirmation of the plan have

1 been satisfied, as set forth in Section 10.01. In addition,
2 the plan can go effective immediately. All of the conditions
3 in Article 10 for the effective date have also been satisfied.

4 And here's what we'd like to note with respect to the
5 liquidation trust agreement. One item remains open. There
6 were several employee loan obligations that were made prior to
7 the commencement of the case. We disclosed it in our
8 schedules. Everyone is aware of it. The committee has been
9 aware of it. The trustee was aware of it. The U.S. Trustee
10 was aware of it. This issue has been given to the committee to
11 pursue and resolve. We'd hoped, at this time, that it would be
12 resolved, but unfortunately it has not yet been.

13 As mentioned earlier, in discussion with the
14 committee, we had all hoped that Lawton Bloom, the debtor's
15 CRO, would serve as the liquidation trustee, given his
16 familiarity with the case and his experience in managing such
17 companies. However, there may be some issues as to his
18 handling of -- pursuing the loan obligations and potential
19 avoidance actions, if that is what happens. And so we want to
20 make sure that all such issues are avoided.

21 We've conferred with the committee and the other
22 parties here today, including Mr. Blumenthal and the U.S.
23 Trustee, and have indicated that we would like to go forward
24 with confirmation of all of the documents, but pursuant to
25 Section 11.1 of the liquidation trust agreement, the

1 liquidation trustee may amend the liquidation trust agreement
2 to create a supervisory board that will be charged with or
3 authorized to pursue this limited issue of resolving what to do
4 with the employee loan transactions. We intend on filing that
5 amended liquidation trust agreement with -- on notice with the
6 Court by the end of the week, but just wanted, for
7 transparency, to let the Court know that will happen. So
8 Lawton Bloom will continue to be the liquidation trustee and
9 will not be dealing with this particular issue.

10 THE COURT: All right.

11 MR. CHAPMAN: So for all those reasons, Your
12 Honor -- I'm happy to go further into -- or answer any
13 questions that the Court may have as to why the plan satisfies
14 all of the requirements of the Code.

15 THE COURT: The only thing I'd ask that you just put
16 on the record is obviously there's a 9019 settlement with the
17 broadcasters. As such, there are releases that need to satisfy
18 the Metro Media standard, and so if you would just give a brief
19 statement on the record as to that.

20 MR. CHAPMAN: Sure. The 9019 settlement, that has
21 been approved by the Court. The terms therein have been
22 incorporated into the terms here in the plan. The releases
23 contained in the plan relate to releases of certain
24 individuals, including the debtor's employees, directors,
25 officers, the committee and its professionals, the debtor's

1 professionals and broadcasters. All are set forth in the plan
2 for actions relating to the -- for the Chapter 11 case. We
3 believe that these releases are appropriate and within the
4 range of reasonableness, have been approved by a court before.
5 We would request that the Court approve them unless the Court
6 has any further questions.

7 THE COURT: But I guess you also -- but you also
8 have -- in addition to plan releases, I think you have, if I
9 remember correctly, the paragraph on exculpation releases and
10 objection, just (a) -- I think (a) and (b) are pretty much the
11 standard, as I see, but I think (c) and (d) talk about the,
12 essentially, third-party releases that is the debtor or any
13 person seeking to exercise -- well, it addresses the
14 broadcasters, right, so -- if I'm getting that correct. So
15 it's essentially a third-party release, but I think the notion
16 is that there's substantial consideration to justify the third-
17 party release, and that the settlement was part and parcel of
18 everything going along with the plan.

19 MR. CHAPMAN: Yes, Your Honor.

20 THE COURT: All right.

21 MR. CHAPMAN: There was substantial consideration
22 given in exchange for these releases. They are a critical part
23 of the plan and are also put forth in the declaration of Mr.
24 Bloom. The releases were heavily negotiated and are in
25 exchange for the broadcasters releasing certain of their claims

1 as provided in 9019. We think their releases are supported by
2 what has been exchanged here and are reasonable in this case.

3 THE COURT: All right. Thank you.

4 MR. CHAPMAN: Thank you.

5 THE COURT: All right. Anyone wish to be heard in
6 connection with the request to confirm the amended Chapter 11
7 plan?

8 MR. KUGLER: All right. Just very briefly, Your
9 Honor. I want to make sure that the Court understands the
10 committee is fully behind this. It has been a difficult case
11 and a complex case over a very short period of time, but I
12 think it's a good result and we're fully on board and support
13 and seek confirmation as well.

14 THE COURT: Thank you. Anyone else wish to be heard?

15 All right. I'm happy to confirm the amended Chapter
16 11 plan of Aereo, Ltd. The Court finds it satisfied all of
17 required and applicable provisions of the Bankruptcy Code,
18 including relevant law.

19 So -- and this is not meant to be an exhaustive list
20 but just the highlights, including Section 1129(a)(1), which
21 talks about the applicable provisions of Title 11, which
22 includes the requirements of 1122 and 1123, which govern
23 classification contents of a plan. So the Court finds that the
24 plan conforms with Section 1122 about classification of claims
25 and interests.

1 The Court also finds that it complies with Section
2 1123(a), which deals with the mandatory contents of a plan,
3 which talks about specifying, for example what treatment of
4 impaired classes and the treatment of each claim and interest
5 and adequate means for implementation.

6 The Court also finds that it satisfies Section
7 1123(b), as applicable, which deals with discretionary contents
8 of a plan.

9 The Court also finds that it complies with Section
10 1129(a)(2). And so 1129(a)(1) focuses on the formal content of
11 the actual plan; (a)(2) focuses on the activities of the plan
12 proponent, so it's meant to ensure that plan proponents have
13 complied with disclosure and solicitation requirements of
14 Sections 1125 and 1126. And the Court finds that those are
15 satisfied.

16 The Court finds that the plan complies with -- and
17 this, again, just to highlight certain of the -- all the
18 applicable requirements, including 1129(a)(3), that it's
19 proposed in good faith, 1129(a)(7), that it's in the best
20 interests of the creditors, 1129(a)(8), dealing with acceptance
21 of the plan, 1129(a)(9), which deals with payment of priority
22 claims, and 1129(a)(10), that requires acceptance by at least
23 one impaired class. 1129(a)(11), which is commonly discussed
24 in these circumstances, does not apply, because it's a
25 liquidating plan, and that deals with feasibility of the debtor

1 going forward.

2 And so for all those reasons the Court is happy to
3 conclude that it meets the applicable requirements.

4 And the last thing we're discussing is the releases
5 that we mentioned earlier. And, as you all know, nondebtor
6 releases and exculpations are permissible in some
7 circumstances, but not as a routine matter, as the Second
8 Circuit has counseled courts and parties in cases such as DBSD,
9 Adelphia Communications, and, most notably, Metromedia Fiber
10 Network, Inc., 416 F.3d 136, 141 (2d Cir. 2005).

11 The Second Circuit has instructed that such releases
12 are proper only in rare cases. The Circuit has counseled that
13 in analyzing nondebtor releases it requires a finding of unique
14 circumstances, and it's given some guidance on that, so
15 releases are permissible when the provisions are important to a
16 debtor's plan, which includes where the release party has
17 provided substantial consideration.

18 The Court finds the releases here to be appropriate,
19 and particularly the -- as to the settlement and 9019, dealing
20 with the Broadcasters, because such substantial consideration
21 has been provided, as we've already talked about at the prior
22 hearing, where the 9019 was teed up and approved.

23 So for all those reasons the Court is happy to confirm
24 the plan, and I think I had some very, very modest comments
25 about the order. I don't know if there's been any changes to

1 the order that was submitted as part of the supplements to the
2 amended Chapter 11 plan on June 1st.

3 MR. CHAPMAN: No, Your Honor. There have not been any
4 changes to that version.

5 THE COURT: All right. I think my very modest
6 comments are on page 17 the first numbered paragraph talks
7 about confirmation of the plan, and at the last line it says,
8 "To the extent any inconsistencies exist between the
9 Broadcasters' settlement agreement and the plan confirmation
10 order, the Broadcasters' settlement agreement controls." It
11 previously dealt with how you deal with the plan versus the
12 Broadcasters' settlement. I've always seen it that at the end
13 of the day the confirmation order controls, basically because
14 you're asking for the Court to approve something, and you don't
15 want to have the possibility that something is somehow approved
16 but then not part of what's going on.

17 So I suspect this is the case. This is, sort of, a
18 belt and suspenders, kind of, provision, but I think the
19 confirmation order should control, so you may want to just
20 tweak that to give everybody the appropriate level of comfort,
21 but I don't think I've approved a Chapter 11 confirmation order
22 where the confirmation orders have, sort of, had an out to it.

23 So I think we address the Metromedia findings for the
24 releases. And for paragraphs 16, 19, and 28, they all deal
25 with bar dates, and I think all of those are bar dates for a

1 variety of different things, including rejection and various
2 things. And I think they're all tied to notice of the entry of
3 the confirmation order, which is going to be done. I think
4 it's set forth in paragraph 28.

5 So what I'd like to do is just add language here that
6 makes it clear that that notice that's going to be given will
7 specify what bar dates it's triggering. Just some very basic
8 language to say this notice triggers the requirement to file a
9 claim under this provision, that kind of claim. And, again, I
10 think it's all discussed in paragraphs 16, 19, and 28. Just so
11 that way if somebody receives that notice they know their time
12 is ticking.

13 And I think the only other thing that I had was on
14 page 31, paragraph 30, and consistent with the, sort of, the
15 minor level of my comments, there's a line in here towards the
16 bottom that says, "Upon the occurrence of the effective date
17 the plan shall be deemed substantially consummated." And I
18 think that's consistent with what the plan says, and I have no
19 problem with the concept, but I think that if it was ever to be
20 litigated it really -- it's not appropriate for an order. It's
21 what the debtors say in the plan, and then there's a test for
22 what substantial consummation looks like. So I would just take
23 that out. Certainly it's appropriate to say it in the plan. I
24 have no problem with that. But I've looked at some other
25 confirmation orders, and I think we tend to put -- people tend

1 to put it in the plan, but it doesn't make its way into the
2 confirmation order.

3 So I think all those are pretty minor things, and I
4 don't think they do any violence to anything that you all have
5 worked out.

6 MR. BLUMENTHAL: Your Honor, can I ask a quick
7 question --

8 THE COURT: Sure.

9 MR. BLUMENTHAL: -- on your comment to paragraph 1, if
10 Your Honor would have a problem with that last sentence if we
11 said "If there are any inconsistencies between the
12 Broadcasters' settlement agreement and the plan, the
13 Broadcasters' settlement agreement controls." And if there was
14 any inconsistency between the order, your order approving the
15 settlement agreement, and the confirmation order, the order
16 approving the settlement agreement controls, because we don't
17 believe there are any inconsistencies.

18 THE COURT: I don't think there are. I think that's
19 close. I'm just trying to think about it sitting here. Again,
20 I think there is a line in that paragraph that I don't have a
21 problem with that says that between the settlement agreement
22 and the plan, the settlement agreement controls. And I don't
23 have a problem with that.

24 MR. BLUMENTHAL: Okay.

25 THE COURT: My only thought is in concept I don't want

1 to have a, sort of, an out in the confirmation order.

2 So I don't -- but I don't know that -- is there really
3 a problem with what's in --

4 MR. BLUMENTHAL: No. What we could do, Your Honor,
5 is --

6 THE COURT: -- the settlement order versus what's in
7 the confirmation order?

8 MR. BLUMENTHAL: -- is simply say if there's an
9 inconsistency between the settlement agreement and the plan the
10 settlement agreement controls, but maybe not talk about the
11 confirmation order. I understand your issue there.

12 THE COURT: All right. All right. Hold on. Let me
13 just --

14 MR. BLUMENTHAL: Yes. Then we can obviate the issue
15 that you just raised.

16 In other words --

17 THE COURT: Yes. No. No, I got it.

18 MR. BLUMENTHAL: Yes.

19 THE COURT: I got it. Because, basically, then it
20 makes very clear what the pecking order is --

21 MR. BLUMENTHAL: Right.

22 THE COURT: -- between the two. Anybody have any
23 comments they want to make on that proposal?

24 MR. KUGLER: I think that's the right way to do it,
25 Your Honor.

1 THE COURT: All right. Anyone else?

2 All right. Yes. I don't have a problem with that.

3 MR. BLUMENTHAL: Okay. Thank you, Your Honor.

4 THE COURT: All right. All right. Anything else as
5 to the order? All right.

6 MR. CHAPMAN: Thank you, Your Honor.

7 THE COURT: All right. Anything else we need to
8 discuss here today? All right. So I'll wait for a revised
9 order. Just make sure to circulate it to all of the parties
10 who are interested before you send it along to chambers, so
11 that everybody's on the same page. But, again, it's pretty
12 modest stuff.

13 And I'll just take this opportunity to thank all the
14 professionals involved in the case. It was a very difficult,
15 challenging case. I think everybody was very helpful in teeing
16 up issues that needed to be teed up. And I think it's a case
17 that could have easily descended into pretty constant warfare,
18 and, under the circumstances, because this was, sort of, just
19 one chapter of a much longer litigation saga, so I appreciate
20 the professionalism of all counsel here to prevent that from
21 happening in an estate that, really, just didn't have the money
22 for that to happen.

23 So I really appreciate that. It was really important
24 to do. And, again, I think there were fights, but sometimes
25 there are fights you've got to fight and that have to be

1 resolved, but I don't think it was unnecessarily acrimonious,
2 which would have been, I think, a difficult path for the case
3 that was already difficult enough. So thank you.

4 MR. CHAPMAN: Thank you, Your Honor.

5 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

6 (Whereupon these proceedings were concluded at 2:34 PM)

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EXHIBITS

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RULINGS

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C E R T I F I C A T I O N

I, Sharona Shapiro, certify that the foregoing transcript is a true and accurate record of the proceedings.

Sharona Shapiro

SHARONA SHAPIRO

AAERT Certified Electronic Transcriber CET**D 492

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Date: June 9, 2015